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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~431~~ 194 31

ISAAC J. HOSHALL, APPELLANT,

vs.

EDWARD A. TAYLOR, JOHN H. TRAVERS, JOHN C. RATHBONE, ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF WEST VIRGINIA.

FILED JANUARY 9, 1869.

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1 Pleas held before the Honorable John J. Jackson, jr., judge of the district court of the United States for the district of West Virginia, at Clarksburg, on Friday, the 6th day of September, A. D. 1867, and in the 92d year of the independence of the United States of America.

Be it remembered that heretofore, to wit, on the 24th day of November, in the year 1865, came Isaac J. Hoshal, by his attorney, and sued out of the office of the said court at Clarksburg a writ of subpœna in chancery against Edward A. Taylor, John H. Travers, John C. Rathbone, H. P. Longmoor, and Alanson Swain; which writ, with the return thereon made, is in the words and figures following:

The President of the United States of America to the marshal of the district of West Virginia, greeting:

You are hereby commanded to summon Edward A. Taylor, John H. Travers, John C. Rathbone, H. P. Longmoor, and Alanson Swain, citizens and inhabitants of the State and district of West Virginia, to appear before the judge of the district court of the United States for the district of West Virginia, at Clarksburg, at rules to be held in the clerk's office of our said court on the first Monday in December next, to answer a bill in chancery exhibited against them in our said court by Isaac
2 J. Hoshal, a citizen and inhabitant of the State of Maryland; and have then there this writ.

Witness the Honorable John J. Jackson, jr., judge of the United States court for the district aforesaid, at Clarksburg, this 24th day of November, in the year of our Lord one thousand eight hundred and sixty-five, and in the 90th year of the independence of the United States of America.

[L. S.] JASPER Y. MOORE,
Clerk U. S. D. C. for D. W. Va.

[50-ct. U. S. inter. rev.]

Return.

"Executed by delivering a copy to Edward A. Taylor, John C. Rathbone, and H. P. Longmore; & A. Swain, J. H. Travers not found.

(Signed) "H. P. NEAL, *Dep'y*,
"For SAM'L B. McCOLLOCH,
"*U. S. Marshal.*"

And at another day, to wit, at rules held in the clerk's office of the said district court, at Clarksburg, on the first Monday in December, 1865, subpœna returned executed upon defendants Edward A. Taylor, John C. Rathbone, and H. P. Longmoor; and defendants J. H. Travers and A. Swain not found, and continued as to said defendants.

And at another day, to wit, at rules held in the clerk's office of the said district court, at Clarksburg, on the first Monday in January, 1866, came the complainant, by his attorney, and filed a bill against the said defendants; which said bill is in the words and figures following, to wit:

3 To the Honorable John J. Jackson, jr., judge of the United States court for the district of West Virginia:

Respectfully complaining, sheweth unto your honor, your orator, Isaac J. Hoshal, a citizen and resident of the State of Maryland—

That on the 25th day of January, 1861, a certain Jacob Howell, of the county of Wood, in the State of West Virginia, by deed of that date demised to George J. Weller, Edward A. Taylor, and John H. Travers, of the said county, all the oil and mineral privileges to be found on the farm of said Howell, situate on the Whiteoak Fork of Walker's Creek in said county, and containing 114 acres, for the term of twenty years, with various privileges as to timber, and upon certain terms, including a royalty of one-tenth of all the oil or other mineral found upon the premises, as expressed in the said lease; said lease was duly acknowledged according to law, and such acknowledgment properly certified, and was thereupon regularly admitted to record in the clerk's office of the county court of Wood County, on the 4th day of February, 1861. Your orator herewith exhibits a copy of the said lease, and prays that the same may be taken and received as part hereof.

4 Your orator further sheweth unto your honor that on the 9th day of September, 1864, the said George J. Weller, by written endorsement upon said lease, assigned all his interest in the same to the said E. A. Taylor. This assignment was duly acknowledged and admitted to record in the office of the recorder of Wood County, and your orator herewith exhibits a certified copy thereof, which he prays may be taken and received as part of this bill.

Your orator further sheweth unto your honor that on the 1st day of April, 1861, the said John H. Travers, by written agreement under seal, assigned and transferred to your orator one undivided half of his right and interest under said lease from Howell (being one-third part thereof) to your orator, thus investing your orator with one undivided sixth part of the rights and interest conveyed by said lease to the lessees therein named. This agreement and assignment was duly acknowledged by the said Travers and your orator, and was regularly admitted to record in the clerk's office of the county court of Wood County, and your orator now here exhibits a certified copy thereof, which he prays may be taken and received as part hereof.

5 Your orator further sheweth unto your honor that some time after this assignment by the said Travers to your orator, of one undivided sixth part of the estate granted by said lease, to wit, on the 19th day of May, 1864, the said Travers, by deed of that date, assigned to the said Edward A. Taylor all the estate, right, title, and interest which he, [then] Travers, then had, or at any time thereafter might have, in the said premises by virtue of the said lease from the said Howell, and which was stated to be one-third part thereof. This assignment was executed and acknowledged by the said Travers and Taylor, and admitted to record in the office of the recorder of Wood; and your orator now here exhibits a certified copy of the same, which he prays may be taken and received as part hereof.

Your orator charges that as the said Travers had previously, by valid deed, duly admitted to record, assigned and conveyed to your orator one-half of his undivided third part of and in the premises, there only remained in him the remaining moiety thereof, and that all that passed or could pass by his said assignment to Taylor was this remaining moiety; your orator's right and interest in the subject being wholly unimpaired by said subsequent assignment. He further charges, at the time of the said assignment, the said Taylor well knew and had actual knowledge

6 of the previous assignment and transfer of one-half of said Travers' interest to your orator; and if this had been otherwise, he charges that, under the statute, the record of the conveyance to your orator bound him as fully and effectually as if he had had actual notice thereof;

and he charges that in taking such assignment, the said Taylor manifestly attempted to practice a fraud upon your ———, an attempt, however, which, as he is advised, must be as ineffectual as it is palpable.

Your orator further sheweth unto your honor that the said Taylor, with a view to carry out the scheme of fraud which he had meditated upon the rights of your orator, subsequently, to wit, on the 7th of September, 1864, by deed of that date, assigned to Hugh Paul Longmoor and J. Castelli Rathbone, two undivided third parts of the estate and interest in said premises granted by the said lease of Howell, professing to retain and reserve for him the remaining undivided third part thereof; and said deed proceeded to set out the terms upon which said assignment was made with various stipulations as to the prosecution of the work of boring for and obtaining oil, and the division of the profits amongst said three parties. The said deed was admitted to record
7 in the office of the recorder of Wood County; and your orator now here exhibits a certified copy thereof, and prays that the same may be taken and received as part of this bill of complaint.

Your orator charges that, at the time of said last-mentioned assignment, the said Taylor was the owner of five undivided sixth parts, or two-thirds and the half of the remaining third of and in the said premises; the remaining half of said last-mentioned third, or one-sixth of the whole being in your orator unaffected and unimpaired by the fraudulent attempts of the said Taylor to appropriate the same to himself, and to exclude your orator from the benefit thereof.

Your orator further sheweth unto your honor that, after said last-mentioned assignment, the said Taylor, Rathbone, and Longmoor commenced to bore for oil with the knowledge and consent of the said Howell, and in due time succeeded in obtaining the same in abundant quantities; that on the 30th of December, 1864, the said Taylor transferred his interest in the premises to one Alanson Swain, and the said Swain taking the place of the said Taylor, the said Rathbone, Longmoor proceeded to gather very large quantities of oil from said premises, amounting to many thousands of dollars in value, and to sell the
8 same and apply the proceeds to their own use. And said parties are still at work upon said premises, gathering large quantities of oil, and making very large profits by their operations, all of which are appropriated by them to their own use.

Your orator herewith exhibits a certified copy of the said assignment from the said Taylor to the said Swain, which appears to have been admitted to record in the office of the recorder of Wood County, and prays that the same may be taken and received as part hereof.

Your orator charges that at the time of taking said assignment the said Swain well knew that your orator was the owner of one undivided sixth part of and in the said premises; and that whether he did actually know the fact or otherwise, yet that your orator's deeds having been duly recorded he was bound thereby, and could acquire no interest in the premises in derogation of the rights of your orator. And your orator further charges that the said Taylor, at the time of said assignment to Swain, being the owner of one undivided sixth part only of and in said premises, his said assignment only operated to transfer to said Swain his said one-sixth part, and did not and could not effect or impair your
9 orator's right to the one-sixth part assigned to him by the said Travers.

Your orator further sheweth unto your honor that, after the said Rathbone, Longmoor, and Swain had succeeded in obtaining oil upon said premises, and when the great value of the lease made by the said

Howell had become apparent, sensible of the imperfection in their title, and knowing perfectly well that your orator was entitled to an interest of one-sixth on the premises and in all the nett profits thereof, they bethought themselves of the necessity of resorting to some expedient by which they might, if possible, extinguish your orator's rights, and exclude him from all participation in the enormous profits arising from the said lease. They accordingly adopted the flimsy and transparent device of a new lease to themselves, under the name of "The Longmoor Oil Company," which they prevailed upon the said Howell to execute to them a new lease of the said premises for the term of thirty years from the 19th of September, 1865, with the right to the exclusive possession of the entire property after the 1st of March, 1866, and the right to immediate possession for all purposes of boring and excavating for and collecting oil and other mineral substances upon said land, reserving to the said Howell the right to remain on the farm until the said
10 1st of March, and to collect the crops then growing upon it. A provision is inserted in thise lease by which the same was to be forfeited in the event of the failure of the lessees to work the same, or their abandonment thereof by their own voluntary act, but such forfeiture was not to take effect if their failure to work the premises should be caused by restraint under legal process; a provision doubtless suggested by the consciousness of said parties that they were seeking to encroach upon the rights of your orator, who they supposed might seek redress himself by a resort to an injuction to stay waste upon the premises until his rights could be adjudicated. This lease appears to have been executed and acknowledged by all the parties thereto, and was admitted to record in the office of the recorder of Wood County; and your orator now here exhibits a certified copy thereof, which he prays may be taken and received as part hereof.

Your orator charges that this new lease, thus taken by said parties, was but a cunningly-devised scheme, devised by said parties to consummate the fraud which had been before commenced by the said Taylor upon the rights of your orator; that the recital in said lease that the said Howell claimed that the old lease had been forfeited was pure fiction; that said former lease contained no clause of forfeiture
11 whatever; that the stipulation therein that the lessees should commence to bore for oil on or before the 1st of April, 1861, and to prosecute such boring without unnecessary delay, was a mere personal covenant, the breach of which imported no forfeiture of the term granted, but was a subject for compensation in damages; that, in point of fact, the said boring had been commenced prior to said first of April, and the said Howell had repeatedly and uniformly recognized and acknowledged that that stipulation had been complied with; that the subsequent delay in the prosecution of the work was abundantly excused by the state of things that immediately followed, and for a long time existed in the country—the civil war that raged in the land, and the proximity of the public enemy, who made repeated inroads into the immediate neighborhood of the property; that performance of the covenant to prosecute the work without unecessary delay was never hastened by request of the said Howell, who, on the contrary, fully recognized the sufficiency of the causes of the delay so to do, and made no pretension that the term granted by the former lease had been thereby forfeited, until the idea was suggested to him by said lessees in the new lease, for the purpose of overslaughing the rights which had been acquired under the former lease by others than themselves. But, how-
12 ever this may be, your orator is advised that the said Longmoor,

Rathbone, and Swain, standing as they did in community of interest with your orator as co-tenants of the premises, could do no act to the prejudice of your orator's rights; that they could only surrender their interests in the term and estate created by the former lease, and could not surrender your orator's without his consent and concurrence; that their act, in taking the new lease, enured as well to the benefit of your orator to the extent of one-sixth part thereof as to their benefit as to the residue; and that in equity they ought to be regarded, and your orator has the right to treat them, as trustees for his benefit to the extent of such one-sixth part; he being, at the time such lease was taken, their co-tenant to that extent; and that he has the clear right in this honorable court to call upon said parties to convey to him one undivided sixth part of the term and estate created by said new lease, upon his contributing his just share and proportion of the expenses incurred, if any, in obtaining the same, and also to require them to account to him for one-sixth part of all the nett profits realized by them from the sales of oil obtained from said premises heretofore, and a proper participation in the operations and borings on said premises hereafter, and
13 in all the profits to be realized therefrom; or, if this honorable court should be of opinion that such direct admission to participation in the operations of the said parties should not be conceded to your ———, that he is nevertheless entitled to have his full one-sixth interest in the premises secured to him in some proper form, together with an account of all profits heretofore realized.

But now so it is, may it please your honor, the said Rathbone, Longmoor, and Swain hold and retain exclusive possession of said premises, claiming the same under said new lease, and refuse to recognize your orator's rights in the subject; they refuse to permit your orator to have any participation in the working of the mines and mineral deposites therein, or in the profits arising therefrom, or to work any portion of said premises for his own use; and wholly refuse to render any account to your orator of the profits heretofore realized by the working of said mines, or to permit him to inspect the books of said company and ascertain the same for him; and wholly deny and repudiate any and all claims made by your orator to the rights of a co-tenant to the extent of one undivided sixth part thereof of said property, and the estate created by the said leases; and combining and confederating with the said Howell, Taylor, and Travers, they seek to defraud your orator in the
14 premises, and to baffle and disappoint him in the assertion of his just rights and pretensions. All which is contrary to equity and good conscience; fraudulent, as it respects your orator, and tends manifestly to his injury and oppression.

In tender consideration whereof, and inasmuch as your orator is remediless in the premises by the strict rules of the common law, and only and properly relievable in a court of equity, where matters of fraud, trust, and partition are properly cognizable and relievable, he prays that the said Edward A. Taylor, John Castelli Rathbone, Hugh Paul Longmoor, John H. Travers, and Alanson Swain, citizens and residents of the State and district of West Virginia, may be made parties defendant to this bill, and may answer the same fully and particularly upon their corporal oaths; that the premises considered, your orator may have a decree declaring him to be entitled to one full undivided sixth part of and in the term and estate created by said leases, and that the said Rathbone, Longmoor, and Swain to hold the one-sixth of the term created by the lease of the 19th of September, 1865, in trust for the use of your orator, and be required to assign and transfer the said interest by

apt and proper deed; that your orator may be admitted to full participation to the extent of one-sixth in the benefits of said lease, upon such terms as to the court may seem proper, and, if necessary, that his
15 interest in the same may be assigned to him by a proper partition, having regard to the value of the property; that the said Longmoor, Rathbone, and Swain may be required to render an account before a commissioner of the court of the profits heretofore realized by them from the working of the said oil-mines, and that your orator may have a decree against them for his proper share and proportion thereof; and that your orator may have such other further and general relief in the premises as the nature of the case requires, may it please your honor to award to your orator the United States most gracious writ of subpœna to the defendants directed, returnable, &c.

(Signed) ISAAC J. HOSHAL,
By LEE & EDMISTON,
His Solicitors.

And at said defendants, Edward A. Taylor, John C. Rathbone, and H. P. Longmoor, having been duly served with process in this cause, and they not appearing to answer, it was ordered by the complainant's counsel that a decree nisi be entered in the office against the said defendants for the matters mentioned in the said bill, unless they should answer at the next rules.

At which rules, to wit, on the first Monday in February, 1866, the said defendants still failing to appear and answer, it was, on motion of the complainant's counsel, that the bill be taken for confessed.

And at another day, to wit, at rules held in the clerk's office of said district court on the first Monday in March, 1866, it was ordered by the complainant's counsel that this cause be set for hearing at the next term of the said district court of the United States for the district of West Virginia, holden at Clarksburg.

16 *(Exhibits referred to in the foregoing bill.)*

This deed, made this 25th day of January, 1861, between Jacob Howell, of the first part, and George J. Weller, Edward A. Taylor, and John H. Travers, partners, doing business under the style of Weller, Taylor & Co., of the second part, all of Wood County, Virginia, witnesseth: That in consideration of twenty dollars in hand paid, the receipt whereof is hereby acknowledged, and of one hundred dollars to be paid on or before the first day of April next, to the said Jacob Howell, his heirs, or assigns, by the said parties of the first part, their heirs, or assigns, for 20 years, all the oil and mineral privileges on and to be found on the said Howell's farm, lying on the Whiteoak Fork of Walker's Creek, in said county, containing 114 acres, together with all the timber necessary to carry on any work of experimenting, boreing, diging, or collecting and conveying to market (except stave timber), all the oil and mineral that the said parties of the second part may find on said premises; and the parties of the second part bind themselves to commence, on or before the first day of April next, to bore for oil, and prosecute the same without unnecessary delay, and to give to the party of the first part one-tenth part of all the oil or minerals that may be got on said premises, he, said Howell, furnishing barrels for his said tenth part; and the said Howell further agrees to render to said parties of the second part, when

called on by them, twelve days' work, as part of the conditions to this agreement.

Witness the following signatures and seals.

(Signed) JACOB HOWELL. [SEAL.]
For WELLER, TAYLOR & CO.,
(Signed) EDWARD A. TAYLOR.

VIRGINIA, WOOD COUNTY, *to wit:*

I, John S. McGuire, a justice in and for said county, do certify
17 that Jacob Howell and Edward A. Taylor, one of the partners of the company of Weller, Taylor & Co., whose names are signed to the foregoing instrument of writing, bearing date on the 25th day of January, 1861, personally appeared before me in my county aforesaid, and severally acknowledged the same.

Given under my hand this 25 day of January, 1861.

(Signed) JOHN S. McGUIRE, *J. P.*

VIRGINIA:

The foregoing lease from Jacob Howell to Weller, Taylor & Co. was this day received, and, with the certificate thereto annexed, admitted to record in the clerk's office of the county court of Wood County.

Given under my hand this 4th day of February, 1861.

(Signed) WILL. HATCHER, *C. W. C.*

[U. S. inter. rev. 5 cts.]

A copy from the deed records of Wood County, book No. 20, page 587.

Teste:

(Signed) G. K. LEONARD, *R. W. C.*

This deed, made this 25th day of January, 1861, between Jacob Howell, of the first part, and George J. Weller, Edward A. Taylor, and John H. Travers, partners, doing business under the style of Weller, Taylor & Co., of the second part, all of Wood County, Virginia, witnesseth: That
18 in consideration of twenty dollars in hand paid, the receipt whereof is hereby acknowledged, and of one hundred dollars to be paid on or before the first day of April next, to the said Jacob Howell, his heirs, or assigns, by the said parties of the first part, their heirs, or assigns, provided the parties of the first part forfeit this agreement, and for the further consideration hereinafter set forth, the said Jacob Howell hath this day leased to the parties of the second part, or their assigns, for 20 years, all the oil and mineral privileges on and to be found on the said Howell's farm, lying on the Whiteoak Fork of Walker's Creek, in said county, containing 114 acres, together with all the timber necessary to carry on any work of experimenting, boreing, diging, or collecting and conveying to market (except stave timbers), all the oil and mineral, that the said parties of the second part may find on said premises; and the parties of the second part bind themselves to commence, on or before the first day of April next, to bore for oil, and prosecute the same without unnecessary delay, and to give to the party of the first part one-tenth part of all the oil or minerals that may be got on said premises, he, said Howell, furnishing barrels for his said tenth part; and the said Howell further agrees to render to said parties of the second part,
19 when called on by them, twelve days' work, as a part of his conditions to this agreement.

Witness the following signatures & seals:

(Signed) JACOB HOWELL. [SEAL.]
For WELLER, TAYLOR & CO.,
(Signed) EDWARD A. TAYLOR.

VIRGINIA, WOOD COUNTY, *to wit:*

I, John S. McGuire, a justice in and for said county, do certify that Jacob Howell and Edward A. Taylor, one of the partners of the company of Weller, Taylor & Co., whose names are signed to the following instrument of writing, bearing date on the 25 day of January, 1861, personally appeared before me, in my county aforesaid, and severally acknowledged the same.

Given under my hand this 25 day of January, 1861.

(Signed) JOHN S. McGUIRE, *J. P.*

VIRGINIA:

The foregoing lease from Jacob Howell to Weller, Taylor & Co. was this day received, and, with the certificate thereto annexed, admitted to record in the clerk's office of the county court of Wood County.

Given under my hand this 4th day of February, 1861.

(Signed) WILL. HATCHER, *C. W. C.*

For value received, I hereby assign all my right, title, and interest
20 to and in the foregoing lease to E. A. Taylor.

Given under my hand and seal this 9th day of September, 1864.

(Signed) GEO. J. WELLER. [SEAL.]

WEST VIRGINIA,
Recorder's Office, Wood County, 9th Sept., 1864.

I, Albert K. Leonard, deputy for George K. Richards, recorder of Wood County, do certify that George J. Weller, whose name is signed to the foregoing assignment, has this day acknowledged the same before me in my office; whereupon the said assignment, being duly stamped according to law, is admitted to record.

(Signed) A. K. LEONARD, *D.*,
For G. K. LEONARD, *R. W. C.*

A copy from the deed records of Wood County, book 22, page 365.

Test:

(Signed) G. K. LEONARD, *R. W. C.*

[Inter. rev. 5 cts.]

This agreement, made and entered into this first day of April, 1861, between John H. Travers, of the first part, and Isaac J. Hoshal, of the second part, witnesseth: That whereas on the 25 January, 1861, Jacob Howell leased to George J. Weller, Edward A. Taylor, and John
21 H. Travers, a certain piece of land, for the term of twenty years from said date, for the purpose of digging for oil or any other mineral substance, which lease is of record in the clerk's office of the county court of Wood County, Virginia, deed book No. 20, page 587. The said John H. Travers, as there shown, owns one-third of said lease or priviledge there set forth. Now, for and in consideration of the sum of thirty-nine dollars in hand paid, the receipt of which is hereby acknowledged, the said John H. Travers, of the first part, have sold & conveyed to the said Isaac J. Hoshal, of the second part, one-half of his right and privileges in said lease. The party of the first & second part are to each pay their equal portion of expenses, & receive their equal one-half of all profits, incomes, &c., arising from the operation on said land thereby leased.

Witness the following signatures and seals:

(Signed) JOHN H. TRAVERS. [SEAL.]
ISAAC J. HOSHAL. [SEAL.]

VIRGINIA, *Wood County, Clerk's Office:*

I, William Hatcher, clerk of the county court of Wood County, do certify that John H. Travers & Isaac J. Hoshal, whose names are signed to the writing above, bearing date on the 1st day of April, 1861, have each this day acknowledged the same before me in said office, whereupon the said writing is admitted to record therein.

22 Given under my hand this 1st day of April, 1861.

(Signed) WILL. HATCHER, *C. W. C.*

A copy from the deed records of Wood County, book No. 21, page 38.

Test:

(Signed) G. K. LEONARD, *R. W. C.*

[5-cts. U. S. inter. rev'e.]

Memorandum of an agreement made & entered into this nineteenth day of May, 1864, between John H. Travis, of the first part, & Edward A. Taylor, of the second part.

Whereas by a certain deed, bearing date on the twenty-fifth day of January, 1861, and recorded in deed book number 20, page 587, Jacob Howell, of the county of Wood, in the State of West Virginia, hath, upon certain terms and conditions, stipulated in said deed, &, for the term of twenty years next ensuing the date thereof, leased unto George J. Weller, Edward A. Taylor, and John H. Travis, partners, doing business under the style of Weller, Taylor & Co., the oil and mineral privileges on and to be found on his, the said Howell's, farm, lying on the White-oak Fork of Walker's Creek, in said county, containing one hundred & fourteen acres, to which deed reference is hereby made for a full and particular recital of the terms and conditions on which it is granted: Now, this agreement witnesseth that the said John H. Travis, in consideration of the sum of one hundred and fifty dollars in hand

23 paid, the receipt whereof is hereby acknowledged, doth bargain, sell, assign, transfer, and set over unto the said Edward A. Taylor all the estate, right, title, & interest which he, the said Travis, now hath or at any time hereafter may have in and to the said premises, by virtue of the said deed from the said Howell, to the said Weller, Taylor & Co., being the one-third part of the same; to have and to hold the said premises unto the said Edward A. Taylor for the remainder yet unexpired, of the above-mentioned term of twenty years, subject to the rent in said deed reserved and contained, of one-tenth part of all the oil or minerals that may be obtained on said premises, to be paid to the said Jacob Howell in the manner in said deed provided, and to the covenants and agreements therein contained; and the said Travis doth hereby covenant with the said Taylor that he has done no act to encumber the said land.

Witness the following signatures and seals:

(Signed) JOHN H. TRAVERS. [SEAL.]

(Signed) E. A. TAYLOR. [SEAL.]

WEST VIRGINIA:

I, Geo. K. Leonard, recorder of Wood County, hereby certify that John H. Travers and E. A. Taylor, whose names are signed to the foregoing writing, dated the 19th day of May, 1864, acknowledged the

24 same before me in my office on the same day; and said writing being duly stamped, was admitted to record in my said office on the day of the date thereof.

Teste:

(Signed) GEO. K. LEONARD, *R. W. C.*

A copy from the deed records of Wood County, book No. 22, page 165.
Teste:

(Signed) G. K. LEONARD, *R. W. C.*

[5-cts. U. S. inter. rev.]

Memorandum of agreement, made and entered into this 7 day of September, 1864, between E. A. Taylor, of the county of Wood, and State of West Virginia, of the first part, and H. P. Longmore and J. Castelli Rathbone, of the second part, witnesseth: That the said party of the first part, for and in consideration hereinafter mentioned, and also the sum of one dollar to him in hand paid by the said parties of the second part, the receipt of which is hereby acknowledged, doth assign and transfer unto the said parties of the second ——, the undivided two-thirds of a certain lease of 114 acres of land, situate in the county of Wood, and State of West Virginia, on waters of Walker's Creek, leased by George J. Weller, John H. Travers, and the said E. A. Taylor from Jacob Howell, on the 25th day of January, 1861, for the term of twenty years from said date of lease, for the purpose of obtaining petroleum or rock oil
25 and other minerals; and the said parties of the second part agree to furnish on said land a good steam-engine in order and rediness to work, and also to sink a conductor in the ground, and also to erect a derrick, so as to have said engine and conductor in order to commence boaring, free of any further costs or expenses to the said party of the first part; and after this is done, each of the said three parties, viz., Taylor, Longmore, and Rathbone, to be equal owners in said lease and fixtures, and to share and share alike in the expenses of boaring, &c., &c., and also to share alike in the profits, if any; and it is also understood and agreed that in the event of not sufficient oil being got after boaring three hundred feet deep, and any two of said partners wishing to bore deeper, and the other partner declining, refusing, or neglecting to go on and furnish his proportion of money necessary to prosecute said work, then, in that event, the said two partners shall have the priviledge of continuing said work under said lease by paying to said party, who refuses or neglects to furnish his share of the money, the sum of twelve hundred dollars ($1,200); and the said party, or his heirs and assigns, hereby agree and binds himself, his heirs, &c., to assign and trans-
26 fer all of his said interest in and to said lease to the said parties paying said money as aforesaid.

Witness the following signatures and seals the day and year first above written:

(Signed) E. A. TAYLOR. [SEAL.]
(Signed) H. P. LONGMOOR. [SEAL.]
(Signed) J. C. RATHBONE. [SEAL.]

WEST VIRGINIA,
Recorder's Office, Wood County, 14th Sept., 1864.

I, George K. Leonard, recorder of Wood County, do certify that E. A. Taylor, H. P. Longmoor, & J. C. Rathbone, whose names are signed to the foregoing writing, bearing date on the 7th day of September, 1864, have each this day acknowledged the same before me in my office; whereupon the said writing, being duly stamped according to law, is admitted to record therein.

(Signed) G. K. LEONARD, *R. W. C.*

A copy from the deed records of Wood County, book No. 22, page 390.
Teste:

G. K. LEONARD, *R. W. C.*

[5-cts. U. S. inter. rev.]

For value received, I hereby assign and set over unto Alison Swain, of New York, all my right, title, & interest in and to the foregoing lease.
Given under my hand —— seal this 30th day of December, 1864.
(Signed) E. A. TAYLOR. [SEAL.]

27 WEST VIRGINIA, IN WOOD COUNTY, *ss:*

I, Henry Amiss, a notary public for the county & State aforesaid, do certify that E. A. Taylor, whose name is signed to the above assignment, bearing date on the 30th day of December, 1864, has acknowledged the same before in my county aforesaid.
Given under my hand this 30 day of December, 1864.
(Signed) HENRY AMISS,
Notary Public.

WEST VIRGINIA,
Recorder's Office, Wood County, 2d Jan'y, 1865.

The foregoing assignment of the lease thereto annexed, stamped to the amount of fifty cents, was this day received in said office, and, together with said lease and the certificates thereto annexed, admitted to record therein.
Teste:
(Signed) G. K. LEONARD, *R. W. C.*

A copy from the deed records of Wood county, book 23, page 273.
Teste:
(Signed) G. K. LEONARD, *R. W. C.*

[5-c't U. S. inter. rev.]

Memorandum of agreement made and entered into this 19th day of September, A. D. 1865, between Jacob Howell, of the first part, and the "Longmoor Oil Company," of the second part.

Whereas the said Jacob Howell did, on the 25th day of January,
28 1861, lease to George J. Weller, Edward A. Taylor, and John H. Travers, for the term of twenty years, all the oil and mineral privileges on and to be found on the said Howell's farm, lying on the White-oak Fork of Walker's Creek, in said county, containing 114 acres, which said lease has been assigned and is now held and owned by the said "Longmoor Oil Company;" and whereas the said Howell claims that the said lease is forfeited, and is willing to make a new contract with the said Longmoor Oil Company: Now, therefore, this agreement witnesseth: That the said Howell hereby leases unto the said "Longmoor Oil Company" the said farm hereinbefore described, for the full end and term of thirty years from the 19th day of September, 1865; and the said Longmoor Oil Company are to bore, dig, collect, and excavate for oil or other mineral substances on said land, and prosecute the same with all reasonable dispatch; for which purpose the said "Longmoor Oil Company" are to have possession of said farm forthwith, but with the privilege to said Howell of remaining on said farm until the first day of March next, and of collecting his crops now growing on said land, after which time the said "Longmoor Oil Company" are to have the full and exclusive possession of said farm, with all the buildings thereon,
29 which exclusive possession is to continue until the expiration of this agreement, unless sooner terminated by the condition here-

inafter contained. In consideration of which exclusive privileges for the term aforesaid, the said "Longmoor Oil Company" bind themselves & their successors and assigns, to deliver to said Howell one fifth ($\frac{1}{5}$) part of all the oil or other minerals that may be obtained on said premises, he, said Howell, furnishing barrells for his one-fifth at the well; and the said "Longmoor Oil Company" hereby agree to work said premises with all reasonable diligence, and to surrender the peaceable possession of the same at the end of their said term unto the said Howell, or his assigns; and if at any time the said "Longmoor Oil Company" should fail, neglect, or refuse to work said premises, and shall abandon the same for the space of one year, then, in that event, the said Jacob Howell, or his assigns or vendees shall have the right to re-enter into the possession of the whole of said premises, and this contract shall cease and terminate; but this forfeiture shall only take place in the event of an abandonment of the work on said premises by the said "Longmoor Oil Company," or their assigns, by their own voluntary act, and not to take effect if they are restrained from working the same by any legal process, or other power over which they have no control. The
30 said "Longmoor Oil Company," to whom this lease is made, is composed of J. C. Rathbone, Alanson Swain, and H. P. Longmoor, each of whom are possessed of one-third of said premises and of the profits arising therefrom.

Witness our hands & seals this the day and year first above written.

(Signed) J. J. HOWELL. [SEAL.]
(Signed) J. C. RATHBONE. [SEAL.]
(Signed) H. P. LONGMOOR. [SEAL.]
(Signed) ALANSON SWAIN. [SEAL.]

WEST VIRGINIA, *Wood County, ss:*

I, W. H. Wolfe, a notary public in and for the county of Wood, and State aforesaid, do hereby certify that J. J. Howell, J. C. Rathbone, and H. P. Longmoor, whose names are signed to the foregoing writing, bearing date September, 1865, personally appeared before me in my said county, and acknowledged the same.

Given under my hand this 19th day of September, 1865.

(Signed) W. H. WOLFE,
Notary Public.

STATE OF NEW YORK, *City and County of New York, ss:*

I, Frederic Bull, a public notary in and for the State, city, and
31 county aforesaid, do hereby certify that Alanson Swain, whose name is signed to the within writing, bearing date on the (19th) nineteenth day of September, A. D. 1865, personally appeared before me in my said county, and acknowledged the same.

Given under my hands and official seal this twenty-second day of September, A. D. 1865.

[SEAL.] (Signed) FREDERIC BULL,
Notary Public, 58 Wall st., New York City.

A copy from the original paper on file in the recorder's office of Wood County for record.

Teste:

(Signed) G. K. LEONARD, *R. W. C.*

[5-cts. U. S. inter. rev.]

And at another day, to wit, at a district court of the United States for the district of West Virginia, continued and held on Wednesday, March the 28th, 1866, came the defendants John C. Rathbone and H. P. Longmoor, and filed their answer to the bill exhibited against them by the complainant; to which answer the complainant replies generally, and the said defendants here suggest that the plaintiff is a non-resident, and that security for costs be required of him.

Answer, to wit:

32 To the Hon. John J. Jackson, jr., judge of the United States court for the district of West Virginia:

The joint and several plea and answer of H. P. Longmoor and J. C. Rathbone to a bill in chancery, exhibited against them and others in said court by Isaac J. Hoshal.

These defendants, by protestation, not confessing or acknowledging all or any of the matters and things in the said complainant's said bill mentioned to be true in such manner and form as the same are therein and thereby set forth and alledged, do plead to the said bill, and for cause of plea severally say, that the said complainant is incapacitated to maintain this suit, by reason of being embraced as one of the persons mentioned in the fifth and sixth sections of the act of Congress, passed July 17th, 1862; that the said compl't was engaged in armed rebellion against the government of the United States, and was aiding and abetting such rebellion, and did not cease to aid, countenance, and abet said rebellion and return to his allegiance to the United States, but continued in the same until it was crushed by the military force of the United States. And, therefore, these defendants do plead in bar
33 to the said complainant's bill, and humbly pray the judgment of this honorable court whether they should be compelled to make any further or other answer thereto.

And for answer thereto, or to so much thereof as they are advised it is material for them to make, these defendants, saving any other exceptions there may be to complainant's bill, answer and say that it is true, as alledged in said bill, that said Jacob Howell did execute a lease to Weller, Taylor & Company for the oil privileges in the 114 acres of land on Whiteoak Fork of Walker's Creek, upon certain terms and conditions as set forth in the article of agreement to them filed with complainant's bill; but these respondents are advised that said lease was never executed by any of said firm but Edward A. Taylor, nor was it ever acknowledged by any one except Howell and Taylor, as will appear by the certificate of the magistrate on the back of said lease, nor was the recording of the same, only as to them; see the certificate of the recorder. Respondents submit that this lease is the personal lease of the said E. A. Taylor; that it nowhere appears on the face of said lease that the complainant had any interest in said lease, or that his vendor, Travers, had any; and as this is a lease with mutual covenants, and as the
34 said Traverse never executed said lease, there was no obligation upon him to perform the requirements of the lease, or pay the rent therein stipulated. Furthermore, respondents assert that said lease, not being under seal or to the said firm, is not good for a term greater than five years; and that inasmuch as the same was not put on record as to Travers, respondents are purchasers of said land under their lease, without notice. Respondents further say, that inasmuch as the said John H. Travers had no title on record to any interest in said lease, that his assignment to compl't passed nothing. But if respondents should be mistaken in this view of the case, that compl't has no legal interest in

this matter, by paper title, and that if he has any claim at all, it is not against respondents, but against his copartners, if he had any; then respondents further say that granting that said Travers was one of the firm of Weller, Taylor & Co., and was entitled to ⅓ of the said lease, and that he sold one-half of his interest, to wit, one-sixth, to comp't, which is not at all admitted by these resp'ts, yet the comp't admits that said Taylor was owner in his own right of one-third of said lease, and of one-third as the vendee of Weller, and one-sixth as the vendee of Travers, making in all five-sixths of said lease belonging to Taylor at the time of his sale to resp'ts. Now these resp'ts ask what claims can the compl't have against them, inasmuch as they only bought two-thirds of said lease from said Taylor, which appears by comp't's exhibit filed with the bill he had a perfect and indefeasible right to. Does the compl't say that the resp'ts are not entitled to these two-thirds? Had not Taylor a right to sell two-thirds? If so, then resp'ts had an undivided two-third interest in said lease, upon which compl't could have no right to interfere.

These resp'ts claim their interests in said lease, and care not who the remaining third, whether Taylor, Travers, Hoshall, or Swain, belongs to, except that they believe that the property honestly belongs to Swain, and further claim that said compl't has no right to bring this suit against them, inasmuch as they only claim the two-thirds sold them by Taylor, and have never set up any claim to the remaining third. They only took what Taylor had a perfect right to sell on the 7th day of September, 1864, the date of resp'ts purchase from Taylor, and resp'ts aver that they have only received two-thirds of the profits of the wells bored on said lease, and have no interest whatsoever in the remaining third, and it makes no legal difference to them who gets it, whether compl't, or def't Swain.

Respondents, for further answer to compl't's bills, say that after they had purchased the two-thirds interest as aforesaid from Taylor, they commenced to bore for oil, and work under the lease executed by Howell to Taylor, when they were met by Howell, who claimed that said lease was forfeited according to its terms; the said Howell alleging that said Weller, Taylor & Co., or Taylor, had commenced boring a well in 1861, after the lease was made, and after boring some 60 or 70 feet abandoned the premises, & did not prosecute the same without unecessary delay, but from that time up to the sale to resp'ts nothing was done by them or either of them towards boring or working said lease, and that therefore the parties did forfeit the lease and threatened the parties with a lawsuit in order to get the possession of the property. In the meantime the said Taylor sold to the def't Swain another third of said lease, but long after resp'ts purchase; and, therefore, if said Taylor sold Swain what did not belong to him or more than he had, it was no concern of respondents. This last sale to Swain was on the 30th day of December, 1864, as per exhibit filed with the bill will be seen. The said Swain entered into the possession of said interest with resp'ts, claiming the one undivided third as his own, furnishing his proportion of the capital to bore wells, &c. All this time the parties were threatened with suit by the said Howell, and their rights affected by the cloud which he cast over their title. Respondents and the said Swain proceeded with their boring for oil; and, finally, after considerable time, trouble and expense, they succeeded in obtaining a good oil well, affording a large supply of oil. After they had obtained this well, & it was found that this territory was valuable, the said Howell was more determined than ever to give respondents trouble by threaten-

ing suit, and otherwise decrying the title of your resp'ts to said territory, and thus preventing them from disposing of the same, which they were desirous of doing. Respondents, being thus situated and hampered in their operations, entered into negotiations with said Howell for a compromise of their differences, in order to quiet their title to the lease; and after some considerable time and negotiation the last lease was executed by Howell to def'ts Longmoor, Rathbone, & Swain, and being the one of which a copy is filed with the bill. Respondents call the attention of the court to the terms of the last-mentioned lease, in which it will be seen that the lessees possess exactly the same interest that they did under the original to Taylor, and that insted of paying one-
38 tenth of the oil as rent to Howell, they now pay one-fifth or twice as much. Yet complainant asserts that this last lease was made to defraud him out of his interest in the first lease. Can it be possible that these resp'ts could be so blind to their own interests as to agree to give twice as much rent under the new lease as they were to pay under the old one, only for the purpose of taking one-sixth interest from compl't, and transferring it to def't Swain? What interest was it to these respondents whether compl't obtained it or def't Swain. They had their two-thirds, and it made no difference to them who got the other third. Therefore resp'ts wholly and flatly deny the alligations of the bill, that this last lease was an "expedient resorted to to extinguish compl'ts rights, & exclude him from all participation in the enormous profits arising from said lease." They wholly and flatly deny "that this new lease was a cunningly devised scheme, devised by said parties to consummate the fraud, which had been before commenced by said Taylor, upon the rights of compl't."

These respondents affirm that the aspersions cast upon their character by compl't, and the epithets applied to them, are false and scandalous, and ought not to be permitted by this honorable court.
39 They challenge the utmost scrutiny into their actions touching this transaction, and claim that in every particular it has been honorable and upright.

Why compl't could impugn the acts and conduct of these respondents without showing some reason for it is more than they can divine. Was not their title to two-thirds of the lease complete? Could it be affected by compl't in any manner whatsoever? Did it make any difference to them who got the other third, whether Taylor, Hoshall, or Swain? And yet compl't most wantonly charges them with devising "cunning schemes" to oust him of rights which did not affect their interests in the least. The bare statement of the facts are a sufficient justification of these respt's. But again compl't avers that the recital in said last-mentioned lease that the old lease had been forfeited was "pure fiction;" that the old lease contained no forfeiting clause; that the stipulation that the lessees should commence to bore for oil on or before the 1st of April, 1861, and prosecute such boring without unnecessary delay, was a new personal covenant, &c., &c.

In answer to this resp'ts say that, as far as they are concerned, they would as soon claim under the old lease as the new one; but that there was grounds to suppose that Howell was right in holding the first
40 lease forfeited. There is a provision in the lease about the payment of money, "provide the parties of the first part forfeit this lease;" evidently meaning that it was the intention of the parties that if the said Weller, Taylor & Co. did not comply with the terms of the lease it was to be forfeited. What was the consideration of the lease? It was $120 in money that the parties should commence by the 1st April next

thereafter to bore a well for oil & prosecute the same without unnecessary delay, & when oil was obtained pay one-tenth as rent. Now, if the consideration failed could the contract be held as subsisting? Howell claimed it could not, and therefore insisted that said lease was forfeited on the ground of the failure of the consideration. Compl't evidently felt that this was true, or else why try to show excuses for such failure. Resp'ts cannot help but be amused at the excuses set up by compl't. Is it not supremely impudent in one whose hand is red with the blood of rebellion to come into a court of equity and set up that very rebellion as an excuse why he should be released from the performance of his contract? Will this honorable court tolerate for a moment such an excuse? Shall he be permitted to take shelter under his own wrong in order to escape the consequences of his own deliberate act? He forsooth
41 to say that he was prevented from prosecuting this work without unnecessary delay, "on account of the civil war that raged in the land, and the proximity of the public enemy, who made repeated inroads into the immediate neighborhood of this property," when he himself was engaged in inaugurating that very civil war & producing the very state of things which he hopes will be able to excuse him from the performance of his contract. Resp'ts cannot believe for a moment that if even this allegation of the bill was true, that this court would regard it in any other light than that instead of being an excuse it aggravated the direlection of the comp't, and gave him no right to any protection in this forum. But resp'ts aver that said allegations are untrue in whole and in part; that there was no time during the whole war that it was unsafe or imprudent to prosecute said work; that so far as resp'ts are concerned, they never knew or heard of any inroads in the neighborhood of this property by rebels, although it may have been possible that there have been a clandestine one made, known to compl't, as he was in a better situation to know of them than resp't, he being one of the rebels himself. Resp'ts aver that said compl't could have prosecuted said work unmolested had he have desired so to have done, and in fact these resp'ts bored
42 their well while the war was in full operation, and a great many others worked in the neighborhood, and at no time were they ever disturbed. Respondents therefore claim that in any aspect of the case, the compl't cannot justify his pretensions here, on the ground of the iminency and proximity of the public enemy, one of whom he was.

But, on the contrary, respondents claim that this was a total abandonment by compl't of any interest, pretended or real, that he had in said lease, and that therefore he can claim nothing on that score.

But respondents are further informed and charge that if said original lease did convey anything to said Travers, as one of the firm of Weller, Taylor & Co., without his executing the same, and the said Travers sold one-sixth of his interest in the same to said Hoshall, the compl't, then that sale constituted the said Hoshall one of the firm of Weller, Taylor & Co. If that be the case then it was competent for any of the partners to sell, assign, or transfer the partnership effects, as he might deem best for the interest of all the partners, & leave the partners to settle the proceeds among themselves. This lease then constituting their only stock in trade, because they were partners in nothing else, and being, as resp'ts contend, a personalty, the said Taylor had a right to sell
43 the whole of it, & his assignment vests the whole subject in his vendees.

Respondents are informed and think they will be able to prove that the said compl't, Hoshall, authorized his copartner, Travers, to sell his interest in said lease, and that said Travers did sell it in pursuance of

said authority by said Hoshall so given; and that said Hoshall, after his return from engaging in the rebellion, did admit that he authorized Travers to sell to Taylor, and said he would ratify it. Respondents deny all fraud, as is alledged in complainant's bill, or that they were confederated with Taylor to defraud the compl't out of any rights he had in the premises.

But respondents charge that they have a right to believe that this suit is a mere afterthought of compl't; that he did not regard this lease as of any value, and that he never would have given himself any trouble about it, had not your resp'ts rendered the territory valuable by their own exertions, and obtaining oil in paying quantities upon it. Respondents charge that said compl't did not advance one cent towards the developing this property, nor has he even tendered any part of the outlay incurred in the developing of the same, nor done anything to entitle him either in law or equity to participate in the benefits
44 to or derived from said territory.

But if respondents are mistaken in this, & the court is of opinion that compl't is entitled to an interest of $\frac{1}{6}$ in said property, then these respondents claim that said one-sixth is to come out of the interest last sold by said Taylor, and not out of the interest of resp'ts. If this be true, then resp'ts respectfully ask this court to dismiss this bill as to them, and let the compl't assert his right as against Taylor & Swain, who alone are liable to him. These resp'ts have certainly two-thirds interest, and that is all they have received of the benefits arising from said lease, and no part of this two-thirds can by any possibility go to compl't.

Respondents, therefore, having fully answered all the alligations in compl't's bill contained, pray the court to dismiss his bill, and award their costs to them by them about their defense in this behalf expended.

(Signed) J. C. RATHBONE.
(Signed) H. P. LONGMOOR.

STATE OF WEST VIRGINIA, *Wood County, to wit:*

I, Wm. H. Small, a notary public for the county of Wood, in the State of West Virginia, do certify that J. C. Rathbone and H. P.
45 Longmoor, whose names are signed to the foregoing answers, this day personally appeared before me in my county aforesaid, and made oath, in due form of law, that the facts therein stated, so far as made of their own knowledge, are true, and so far as made upon the information of others they believe to be true. Given under my hand this 27th day of March, 1866.

(Signed) WM. H. SMALL,
Notary Public.

[5-ct. U. S. inter. rev.]

Before the undersigned, clerk of said court, personally appeared M. Edmiston, & made oath that John H. Travers and Alanson Swain, two of the defendants named in the above cause, are not residents of the State of West Virginia, as he has been informed and believes.

(Signed) M. EDMISTON.

Sworn to before me this 20th day of March, 1866.

(Signed) JASPER Y. MOORE,
Clerk U. S. D. C. for D. W. Va.

And at another day, to wit, at a district court of the United States

for the district of West Virginia, held at Clarksburg on Wednesday, March the 28th, 1866.

The object of this suit is to recover of the defendants one undivided sixth part of and in the premises mentioned in a certain lease, dated the 25th of January, 1861, executed by Jacob Howell to George J.
46 Weller, Edward A. Taylor, and John H. Travers, as partners, for a term of twenty (20) years in the oil and mineral privileges in a tract of land containing 114 acres, situate in Wood County, and State of West Virginia; and also to obtain an account of the profits realized by the said Longmoor, Rathbone, and Swain from the said premises, and a decree for the share thereof due the complainant.

The defendants John H. Travers and Alanson Swain not having entered their appearance and filed their answers in this cause, and it appearing by affidavit that said defendants are not inhabitants or residents of this State, it is ordered that they do appear here in one month after due publication hereof; and that this order, be published once a week for four successive weeks in the Parkersburg Gazette, and also be posted at the front door of the court-house of Harrison County, in this State, as prescribed by law. And it is further ordered that such publication and posting of this order shall stand for service of process upon the said defendants therein named, and if they shall fail to appear within one month after such publication is completed, this cause may be heard as to them.

47 The defendant John H. Travers, for answer to the bill of complainant exhibited against him in the above-entitled cause, says that all the matters and allegations therein contained are true, as far as his own personal knowledge extends, and as to those matters and allegations that are not within his own personal knowledge he believes them to be true, but the said defendant does not admit that he intended to convey the interest of the said Hoshall in the Howell lease by the deed of 19th of May, 1864, but the same was so recited in the said deed by mistake or inadvertency on his part.

(Signed) JOHN H. TRAVERS.

STATE OF OHIO, *County of Licking, ss:*

Before me, William A. King, a United States commissioner for the district court of the southern district of Ohio, personally appeared John H. Travers, in my county & district aforesaid, and was by me first duly sworn on oath, and stated that he had heard the foregoing answer read, and that he knew the contents thereof; that the same is true, to the best of his knowledge, information, & belief.

(Signed) JOHN H. TRAVERS.

48 Subscribed and sworn to before me this 25th day of February, A. D. 1867.

(Signed) WILLIAM A. KING,
United States Commissioner Southern District of Ohio.

Depositions.

Deposition of witness taken to be used in an action pending in the district court of the United States for the district of West Virginia, at Clarksburg, wherein Isaac J. Hoshal is plaintiff, and Edward A. Taylor, John C. Rathbone, Hugh P. Longmoor, John H. Travers, and Alanson Swain are defendants.

Said deposition, taken on this 25th day of February, A. D. 1867, at the instance of said plaintiff, and on his behalf, without the service of notice on any of said defendants or their attorneys, in accordance with the statutes of the United States in such case made and provided. The said plaintiff appeared by Davenport, esq'r, his attorney, and thereupon the said Isaac J. Hoshal produced the following witness:

John H. Travers, of lawful age, who, being first duly sworn, deposeth and saith:

Interrogatory 1. What is your name, age, place of residence? and state whether you are acquainted with the parties to the above-entitled action.

49 Answer. John H. Travers is my name; my age is thirty-nine; and Newark, Ohio, my place of residence; I am acquainted with a part, not all; I am acquainted with Mr. Hoshall, Edward A. Taylor, Hugh P. Longmoor, and George J. Weller; that is all that I am acquainted with.

Interrogatory 2. State what is the distance between Newark, Ohio, and Clarksburg, West Virginia; and also the distance between Newark, Ohio, and Parkersburg, West Virginia.

Answer. I believe it to be between 220 or 230 miles to Clarksburg, West Virginia, and two hundred miles to Parkersburg, West Virginia, by the route that I would go.

Interrogatory 3. State whether the distances named in the last interrogatory are the distances by the usual ordinary courses of travel.

Ans. To the best of my knowledge they are.

Int. 4th. State whether you are one of the parties defendant in the above-entitled suit.

Answer. I am.

Int. 5th. State whether or not in the year 1861 you, together with George J. Weller and Edward A. Taylor, took a lease of certain

50 premises in Wood County, West Virginia, of one Jacob Howell, for the purpose of mining and boring for oil and other minerals.

Answer. I did.

Int. 6th. State if you now own any part of that lease; or if you have conveyed it, state to whom, and all the circumstances relating thereto.

Answer. I do not own any of it now; I conveyed the one-half of my interest to Mr. Isaac J. Hoshal in 1861; the other part of it was conveyed to Edward A. Taylor in May, 1864.

Int. 7th. State if the conveyance made to Edward A. Taylor did or did not recite that you conveyed your interest, which consisted of one undivided one-third part of the premises leased from Howell.

Answer. That is a question I hardly know how to answer; if it does, it was done with George Neal's advice, if it recites more than one-sixth.

Int. 8th. State particularly the circumstances under which the conveyance to Taylor was made.

Answer. Mr. Taylor wished to purchase my interest in the How-

51 ell lease, and also Mr. Hoshall's. I told him I had no authority to sell Mr. Hoshall's lease, but he could take a lawyer's advice about it. We went to George Neal, at the instance of Mr. Taylor; to the best of my knowledge, he, Mr. Taylor, stated the circumstances to George Neal; George Neal said he would give us an answer in half an hour, and Mr. Taylor and myself went back to George Neal's office;

George Neal said he could get up an instrument of writing by which Edward A. Taylor could have the one-third interest, and did get up an instrument for which I paid him his fee of five dollars.

Int. 9th. State whose interest, mentioned in your last answer, was the one-third interest spoken of?

Answer. Myself and Mr. Isaac Hoshall.

Int. 10. State, if you know, whether or not Mr. Edward A. Taylor informed George Neal of Mr. Hoshall's interest in the Howell lease.

Answer. He did.

Int. 11. State what consideration, if any, Mr. Taylor paid you for Mr. Hoshall's interest, or whether or not he was to pay any consid-
52 eration for Mr. Hoshall's interest, or one undivided sixth part of the Howell lease.

Answer. There was none paid for Mr. Hoshall's interest, and there was nothing mentioned as a consideration of Mr. Hoshall's interest.

Int. 12. State whether or not, at the time of the assignment to Edward A. Taylor of your title in the Howell lease, Edward A. Taylor had or had not knowledge of your previous conveyance to I. J. Hoshall; and, if yes, from whom did he receive such knowledge.

Answer. He had knowledge from me, and also by conveyance of sublease to Lockwood and Davenport, and the records of Wood County, and he also had notice from I. J. Hoshall.

Int. 13. State whether or not, prior to April 1, 1861, you, together with George J. Weller and Edward A. Taylor, did or did not enter upon the said Howell lease to bore for oil; and, if so, state fully what you did.

Answer. We did enter upon the Howell lease in February, 1861, and commenced making preparations to bore; we bored one well to the depth of seventy-two feet, I believe, more or less; I then left the
53 premises and went to Parkersburg, leaving Mr. Hoshal to look after my interest; we then bored another well to the depth of one hundred and twenty-five or thirty feet, more or less; I was there several times while they were boring the last well.

Int. 14. State whether or not, after the 1st day of April, 1861, Jacob Howell consented to your mining operations on said premises; if yes, state what he did to indicate his consent thereto.

Answer. To the best of my knowledge he worked for us at boring wells after the first of April, 1861, on the Howell lease.

Int. 15. State whether or not you did or did not prosecute said mining and boring operations without unnecessary delay.

Answer. We did prosecute them without unnecessary delay.

Int. 16. State whether or not said Howell ever pretended or claimed that your lease was forfeited by reason of your non-compliance with any of the covenants, conditions, stipulations, or agreements therein.

Answer. Not to my knowledge.

Int. 17. State at about what time you and your co-tenants sus-
54 pended boring operations upon the Howell lease.

Answer. In the latter part of April or the first of May, A. D. 1861, to the best of my recollection.

In. 18. Why did you suspend?

Answer. In consequence of not being able to get back and forth from Parkersburg to the Howell lease on account of the military authorities at Parkersburg.

Int. 19. Why was it necessary to go to Parkersburg?

Answer. For provisions, and sharpening our tools.

Int. 20. In your answer to the 18th interrogatory you state that you

were not able to get back from Parkersburg to the Howell lease on account of the military authorities at Parkersburg. Please state the nature of that interruption.

Answer. We were not able to get passes, and the military authorities required passes; and we were not safe in consequence of bushwhacking in the mountains.

Int. 21. Please state whether or not any authority, either parol
55 or written, was ever given you by Isaac J. Hoshal to convey, assign, release, or surrender, or to in any manner interfere with his, Hoshall's, title, estate, or interest in the Howell lease, or whether you ever claimed to have any such right or power.

Answer. Mr. Hoshall never gave me any power to interfere, either parol or written, with his interest in the Howell lease; neither did I claim any.

Int. 22. State whether or not, after Mr. Hoshall had been informed by you of the conveyance made by you to Taylor, and of the nature of it, he did or did not ratify by parol statements or written instrument, the conveyance aforesaid; or whether he in any manner assented thereto.

Answer. He did not ratify it either by parol or written statements, and he did not assent; & further this deponent saith not.

(Signed) JOHN H. TRAVERS.

UNITED STATES OF AMERICA,
Southern District of Ohio, ss:

I, William A. King, United States commissioner appointed by the circuit court of the United States of the seventh judicial circuit
56 and southern district of Ohio, do hereby certify that the above-named John H. Travers, whose name is subscribed to the foregoing deposition, was by me first duly sworn to testify the whole truth in the cause aforesaid; that the said testimony by him given was subscribed by said John H. Travers, in my presence, after the same had been reduced to writing; that said testimony was reduced to writing by me, in the presence of said witness, and was taken on the 25th day of February, A. D. 1867, at my office, in the city of Newark, in the county of Licking, and State of Ohio. I do further certify that no notification of the taking of said deposition was made out and served upon any of said defendants, it having been made to appear by proof that no one of said defendants, or their attorneys, were within one hundred miles of the place of taking said deposition.

Dated this February 25, 1867.

(Signed) WILLIAM A. KING,
United States Commissioner Southern District of Ohio.

Commissioner's fees, $3 50. Paid by plaintiff.

In the district court of the United States for the district of West Virginia.

ISAAC J. HOSHAL
vs.
EDWARD A. TAYLOR, &c.

57 Take notice that the depositions of D. C. Lovett, Jacob Howell, E. A. Taylor, and others, will be taken at the law office of George W. Neale, esq'r, in the city of Parkersburg, West Virginia, on the 21st day of August, A. D. 1866, between the hours of 8 o'clock a. m. and 8 o'clock p. m., to be read in evidence in the above-named cause on be-

half of the said defendants. And if from any cause the taking of the same shall not be commenced, or being commenced, shall not be completed on that day, the taking thereof will be adjourned from time to time until the same shall be completed.

Yours, &c.,
(Signed) H. P. LONGMOOR.
(Signed) J. C. RATHBONE, & OTHERS.

(Endorsement:) We accept legal service of the within notice.
August 2d, 1866.
(Signed) LEE & EDMISTON.

The depositions of D. C. Lovett and others taken before me, George W. Neale, a commissioner in chancery of the circuit court of Wood County, in the State of West Virginia, pursuant to the notice hereto annexed at the law office of George W. Neale, in the city of Parkersburg, in said county, on the 21st day of August, A. D. 1866, between the hours of 8 o'clock a. m. and eight o'clock p. m., to be read as evidence
58 on behalf of Edward A. Taylor and others in a certain cause depending in the district court of the United States for the district of West Virginia, wherein Isaac J. Hoshal is plaintiff, and the said Edward A. Taylor and others are defendants.

Present, Isaac J. Hoshall, plaintiff; Jas. M. Jackson, attorney for defendants.

No witness appearing, the further taking of these depositions is continued until Thursday next, August 23d, 1866, at the same place and between the same hours.

(Signed) GEO. W. NEALE,
Commissioner.

THURSDAY, *August 23d*, 1866.

Present, Jas. M. Jackson, attorney for defendants; M. Edmiston, attorney for plaintiffs.

John Dixon, being first duly sworn, deposes and says as follows, to wit:

In the years 1861, 1862, 1863, 1864, and 1865, I lived in Wood County, West Virginia, adjoining the farm of Jacob Howell, on the waters of Walker's Creek, in said county. I am acquainted with the oil property of said Howell, now in the possession of Langmoor, Rathbone & Co. I know of Taylor, Weller & Co. occupying a part of that land, in the year 1861, under a lease. I saw Isaac J. Hoshall, E. A. Taylor, Geo. J. Weller, and Travers on said property in the year 1861, and before the
59 United States troops crossed the Ohio River into the State of West Virginia; they commenced boring a well and sunk the same to the depth of one hundred & thirty feet; they abandoned this well & commenced boring another, which they sunk seventy or eighty feet. They quit their operations there as soon as the troops crossed the river. They never resumed their work afterwards. I never saw the plaintiff, Hoshall, there after he left as aforesaid. I know of no work being done there by said Hoshall from that time to the present. The defendant Jacob Howell took possession of the property, and claimed the lease to be forfeited. This was after the property was left by them, & the troops had crossed over. He has frequently since then claimed that the lease was forfeited, & the property was his own. Jacob Howell held possession of the property from the time it was left as aforesaid,

until Longmoor & Rathbone took possession. During all this time nothing was done by Taylor, Weller & Co. on the property. Taylor came out once and cut some derrick poles. He did not erect any derrick poles, or commence boring, or do any other work.

Cross-examined:

After the parties quit boring, as stated above, Hoshall came to deponent's house, & remained most of the summer of that year (1861). He frequently said, during that time, that they expected to resume the work.

60 I do not recollect of notifying him that if he did not leave he would be arrested. Hoshall said one day that some one had notified him to leave. I do not know that this was the cause of his leaving. When they left, they left some tools on the ground. I think I heard Longmoor and Rathbone say they bought Taylor out. I think that Longmoor and Rathbone commenced work in the summer of 1864. They brought their engine out a short time after Taylor cut the derrick poles. Longmoor & Rathbone obtained a producing well on the property before they took a new lease. Howell was in possession of the property, and the owner of the fee. I know of his working with Longmoor & Rathbone before the month of September, 1865, and that he was willing for them to go there.

Re-examined:

Howell always claimed that Hoshall had forfeited his interest there by abandoning the property and going off into the southern army. I never saw Hoshall from the time he left until the close of the war. During the time he remained at my house, to wit, the summer of 1861, he did no work on the property. I do not know of Hoshall's employing any to take care of his interest there. I know of no one representing him there from that time until the commencement of this suit; and further this deponent saith not.

(Signed) JOHN DIXON.

61 Jacob Howell, being first duly sworn, deposes & says as follows, to wit:

I have resided on what is known as the Howell farm, on the White-oak Fork of Walker's Creek, in Wood County, West Virginia, for the last five or six years. I am the owner in fee of that property. I gave to Weller, Taylor, and Travers the lease under which the plaintiff, Hoshall, claims. The lease was drawn by Edward McGuire. It was drawn at the time it bears date.

Question by defendant's counsel. What was your intention in regard to the forfeiting clause in the lease?

Answer. My understanding was that the lease was to be forfeited for a failure to work the same, & that the one hundred dollars named therein was to be forfeited also.

(The foregoing question and answer are objected to by the plaintiff's counsel.)

The further taking of these depositions is continued until Saturday, August 25th, 1866, at the same place & between the same hours.

(Signed) GEO. W. NEALE,
Commissioner.

SATURDAY, *August 25th*, 1866.

Present, M. Edmiston, attorney for plaintiff; James M. Jackson, attorney for defendants.

62 The examination of Jacob Howell was resumed by defendants' counsel as follows, to wit:

Taylor, Weller, & Co. first took possession of the lease about February, 1861. They remained in possession of it until the troops crossed the river, which, I think, was in May, 1861. Hoshall had left a few days before that, ho. Hoshall never returned to the property, or attempted to do anything with it, until the close of the war. He remained in the neighborhood for some four or five months, during which time he never attempted to do anything with the lease. During the entire war there was no danger to parties operating there or in the vicinity; other parties remained and continued their operations without disturbance. There was some talk, but never any danger or disturbance. Other parties worked on both sides of my farm more or less during the whole war. Mr. Handlin never ceased operations. The Handlin property is about one and a half miles distant from my property. When they left, they left an old set of tools, which Taylor took away when the engine came. The tools & poles were left standing in the derrick. The derrick rolled down and broke the pools and pin off the sinker. Taylor took the tools away in the fall of 1864, a short time before the engine came. Taylor came there & cut down two gums, & said he was going to erect a derrick, but did not do it; with this exception, neither Taylor,
63 Weller & Co., or any of them ever did any work there from the time the abandoned the property in 1861. I lived on the land all the time, both before and after giving the lease, & still do. A short time before Longmoor & Rathbone sent the engine, Taylor came and wanted to commence operations. I was working at the time at Handlins, and came over and forbid him doing so, telling him that I considered the lease as forfeited. He went off then without doing anything. The time he cut the poles was before the time just spoken. I claimed that the lease was forfeited after the expiration of six months after they left it. I so considered it forfeited from that time on. I was in possession of the property at that time, claiming and holding adversely to them. I never notified them that I considered it forfeited at any time other than the one spoken of above, or in any other manner. The time that I notified Taylor was before Hoshal returned to this country. When the engine came I notified the waggoner not to put off the engine on my property; that the lease I considered forfeited. He then unloaded it on the adjoining property. I again notified Taylor after that. He claimed to have an interest with Longmoor & Rathbone. I consented for Longmoor & Co. to go to work, because I thought
64 there would be a lawsuit for five or six years, which I wished to avoid. Longmoor promised, if I would consent, that they would give me an additional interest; that contract was afterwards reduced to writing, & conformably to the above agreement, after obtaining oil, the executed another contract, by which I received one-fifth of the oil; that contract is the one under which they are now operating. They commenced operations under the original verbal agreement, and after obtaining oil they give me the additional interest as above, as promised at the time. I consented to their commencing operations. It was not under the old contract between Taylor, Weller & Co. and myself that I consented for Longmoor & Co. to go to work, but it was under the verbal contract and agreement between Longmoor & Co. and myself, that if oil was obtained I should have an additional interest, and that if oil was not found that he would sell my property for me; this contract was afterwards reduced to writing when oil was found, and by it I received

one-fifth of the oil. It is this contract under which Longmoor & Co. are now working.

Cross-examined:

65 When Taylor, Weller & Co. left the property, they left at my house a stove, and some dishes & other things which are there yet. I never heard of Hoshall being arrested. There was some talk among the neighbors about arrests, but of no one in particular. Hoshall then went away, and after a short time he returned, and remained a time; how long I do not know. It was after I communicated to Hoshall that there was talk of arrests that he left When Longmoor & Co. came to take possession of the property they claimed under the original lease given to Taylor, Weller & Co. I refused this. They then sued me before a magistrate. I came to town then and saw Longmoor, who promised to give me an additional interest, as above stated. I then consented to their commencing operations, and the suit was dismissed. I then took a contract from them to bore a well for them, which I did. They did not have possession of the property until I came to town, and made the agreement as above stated. When I returned I moved the engine myself on the property, & bored the well. There was no agreement as to the time the lease was to run or the amount of my interest, until after the oil was found; but it was agreed that if I would go on & bore the well they would give me a good interest. The amount of my additional
66 interest & the terms of the lease was fixed at the time the last lease was executed.

Re-examined:

It was my determination to defend the lawsuit above spoken of, and I would never have consented to their going on with the work if the new agreement between Longmoor & Co. and myself had not been made. At the time of executing the new lease between myself & Longmoor & Co. I did not understand that the object was to deprive Hoshall of his interest in the property under the original lease.

And further this deponent saith not.

(Signed) J. J. HOWEL.

Edward A. Taylor, being first duly sworn, deposes & says as follows, to wit:

I was one of the firm of Weller, Taylor & Co. We operated under the lease executed to us by Jacob Howell; how long I do not know. We quit work a day or two after the troops crossed the Ohio River into Virginia. Mr. Hoshall bought one-half of Travers's interest at the time we commenced operations, & aided in the prosecution of the work. We never resumed operations after we quit work as above. Howell notified me frequently afterwards that he considered the lease forfeited; also at the time the engine was taken there. During all that time Hoshall had gone off, and never returned until the close of the war. I
67 sold two-thirds of the lease to Longmoor & Rathbone, and retained the remaining third. After we obtained possession I sold the remaining third to Mr. Swain. After I had sold the two-thirds to Longmoor and Rathbone, Mr. Howell yet claimed that the lease was forfeited, and notified us not to go there. Howell refused to allow me take the engine on the property, and I was the person who instituted suit. The suit was brought in my own name, I think; but I may be mistaken. After the suit was brought Howell came to town, and he and I went to Longmoor's office. Howell claimed that the lease was forfeited. Long-

moor stated to Howell that he would do better by him if he would move the engine and go on and bore a well. Howell refused for a long time to consent. He finally agreed to bore the well for a stipulated price per foot, on Longmoor's consenting to give him a greater royalty. The amount of his interest was not stated at the time. We contended that the lease was good. Howell contended that the lease was forfeited. We then made a new agreement in lieu of the old one, by which Howell consented to give us possession, and we agreed to give a greater royalty. This agreement was verbal. Howell paid the costs; the suit was dismissed, and in this way we got possession. It was after this I sold to Mr. Swain.

68 During this time Hoshall was not in the country. When Hoshall returned, after the close of the war, he told me he had been in the southern army. He returned during the summer of 1865. A short time after Hoshall returned, Longmoor, Hoshall, and myself had an interview about the leases, and Hoshall remarked to us that we need not give ourselves any uneasiness about the matter; that Travers had sold his (Hoshall's) interest in the lease, thinking that it was for the best, but that it turned out to be for the worst; but that he was going to Ohio to see Travers, and on his return that he would enter into any agreement that we desired. We had heard that he intended to institute suit for his interest, & he told us he would not give us any trouble about it. At that time he said nothing about having authorized Travers to sell his interest. Previous to that he denied giving him such authority. Travers sold to me his one-sixth, and also Hoshall's one-sixth interest.

Question. Did Travers claim at the time he sold to you that Hoshall had authorized him to sell his interest?

Answer. He did so claim. He said he knew that Hoshall would be satisfied with any disposition that he (Travers) might make of

69 the lease.

(The foregoing question & answer objected to by plaintiff's counsel.)

Cross-examined:

We bored two shallow wells on the property before we left it.

Question. Why was it that Mr. Howell paid the costs of the suit?

Answer. He told me that his reason for doing so was, that he had not money enough to go into a lawsuit.

Question. Did you and Longmoor, at the time of the interview between yourself, Longmoor, and Howell, consider the original lease cancelled?

Answer. We did not; that is to say, at the time we went out to Longmoor's office, we, id est, Longmoor and I, did not consider the lease cancelled. But after we had entered into the new agreement, stated above, we did consider the original lease canceled and of no effect. The new agreement would have been reduced to writing at the time, but Howell had to go out on the train that evening, and we had not time to do so.

Question. Did you ever, at any time, consider the original lease forfeited; if so, when?

70 Answer. Not until after the interview above stated between Longmoor, Howell, and myself.

Question. Why did you then think it forfeited?

Answer. Because we had made a new contract, thereby setting aside the old one.

Question. What, if anything, had you done prior to that time, by which your mind became satisfied on that occasion that the lease was forfeited?

Answer. All that we had done was that we had not complied with the original lease from Howell to Taylor, Weller & Co.

Question. Am I to understand that you at that time believed the lease to be forfeited, and acted accordingly?

Answer. I did not consider the lease forfeited until after the interview between Longmoor, Howell, and myself, when I did.

Question. Had you considered and believed up to that time that you had complied with the terms of the lease?

Answer. I had not; I knew we had not complied with the terms of the lease to Taylor, Weller & Co.

Question. If you knew that you had not complied with the terms of the lease, why was it that you did not think the lease was forfeited up to the time of the interview above spoken of?

71 Answer. I never thought anything about its being forfeited up to that time, nor would I have thought of it then had not Howell objected to our putting down the well.

Question. Was that the fact that satisfied you that it was forfeited?

Answer. No, sir; I would even then not have admitted it to be forfeited, but for the verbal understanding between Howell, Longmoor, & myself.

Question. Do you believe now, or have you ever believed, that the lease was, in point of fact, forfeited?

Answer. I believe that the lease was forfeited, though I would not admit it to Howell; I always thought that I could back him out by a lawsuit.

Question. Did you, after the conversation referred to above, regard or treat the original lease as valid or invalid?

Answer. I did not afterwards look upon the original lease as worth anything at all to us.

Question. Why was it that you afterwards sold to Mr. Swain under the original lease?

Answer. Because the verbal agreement had not been reduced to writing; and as the work was still going on, and I had not money enough to pay my proportional share with Longmoor and Rathbone, I sold to Swain, he being willing to take my interest in the original lease

72 under the verbal agreement aforesaid.

Question. Did you not consider that the old lease was to continue until the new lease was reduced to writing, subject to the promise on the part of Longmoor to pay more oil?

Answer. I did not; when we made the verbal agreement we threw the old lease aside, & would have reduced the new one to writing as I have said, had we had time.

Question. Was there any clause in the writing executed by you to Swain, recognizing the verbal agreement?

Answer. There was not, that I know of

Question. At the time you were seeking to take possession of the property with the engine, were you acting in good faith with Howell?

Answer. I was.

Question. When you agreed that the lease was forfeited, had you not brought suit improperly against Howell; and, if so, why did you request him to pay the costs of the suit?

Answer. At the time the suit was instituted, the verbal agreement had not been made; I did not require him to pay the costs.

Question. If you agreed that Howell was right and you were wrong, why did Howell pay the costs?

73 Answer. We did not agree to anything of that kind; why he paid the costs I cannot say.

Question. Did you agree at that time that the lease was forfeited?

Answer. After the conversation was over I did so agree.

Question. Did you enter into a new contract with Rathbone and Longmoor, after the day you talked with Howell, in the office of Longmoor, and form a new partnership with them?

Answer. I did not.

Question. When was it that the terms of the new lease were agreed, and the royalty to be paid to Howell stipulated, and by whom?

Answer. I do not know; I sold to Swain before the new lease was executed.

Question. How long was the lease to run that you sold to Swain?

Answer. The original lease was given for twenty years; how much of that time had expired at the time I sold to Swain I do not know.

Question. Do you mean to say that you sold the unexpired term of that lease?

Answer. I mean to say that I sold my entire interest then remaining to me in the property.

Question. What interest did you buy of Travers?

Answer. I bought a one-third interest.

Question. Were you satisfied at that time of Travers's right to sell that interest?

74 Answer. Travers having told me that Hoshall would be satisfied with any disposal he might make of it, I had no right to doubt his veracity.

Question. Did you not at the time of the conveyance advise with George W. Neale, as attorney, in regard to it?

Answer. I consulted Mr. Neale, and he drew the conveyance.

Question. Did Mr. Neale give you an opinion as to the right of Travers to convey the interest of Hoshall? If so, what opinion did he give?

(The counsel for defendant objects to the propounding of this question to the deponent on the ground that it is a communication between client and attorney, and therefore privileged. The commissioner sustains the objection.)

And further this deponent saith not.

(Signed) E. A. TAYLOR.

No other witness appearing, the further taking of these depositions is continued until Monday, August 27th, 1866, at the same place, and between the same hours.

(Signed) GEO. W. NEALE,
Commissioner.

The deposition of George W. Neale, taken before me, William Dils, a notary public for the county of Wood, in the State of West
75 Virginia, at the law office of George W. Neale, in the city of Parkersburg, in said county, on Monday, the 27th day of August, 1866, between the hours of 8 o'clock a. m. and 8 o'clock p. m., pursuant to the notice hereto annexed and the several continuances herein above, to be read as evidence on behalf of Edward A. Taylor and others, in a certain cause depending in the district court of the United States for the district of West Virginia, wherein Isaac J. Hoshall is plaintiff, and the said Edward A. Taylor and others are defendants.

George W. Neale, being duly sworn, deposes and says as follows, to wit:

That sometime during the summer of 1865, being a short time after the return of the plaintiff Hoshall from the confederate army, I was present at a conversation between said Hoshall and the defendant Taylor in reference to the property in controversy in this suit. In that conversation Hoshall said that when he left this country for the southern army, he instructed the defendant Travers to dispose of all his interests here, including his interest in the property now in dispute, and that he would ratify on his return anything that Travers might do in this particular. When his attention was called to the sale of his interest in this property by Travers to Taylor, he expressed his entire concurrence therein and remarked that he was satisfied that Travers
76 had done what at that time he regarded best for his, Hoshall's, interest. He further stated that he was then going to Newark, Ohio, to have a settlement with Travers, and on his return he would enter into any articles that might be necessary to ratify and confirm the sale made, as above stated, by Travers to Taylor. This is, in substance, the conversation as I now remember it.

Cross-examined:

This conversation occurred sometime during the summer of the year 1865, on Court square or its vicinity, in the city of Parkersburg, in the State of West Virginia. Taylor, Hoshall, and myself, and perhaps John V. Ruth were present; there may have been one or two others, but my recollection now is, that Taylor, Hoshall, and I separated ourselves from any others that may have been present, and that the conversation just detailed was confined exclusively to Taylor, Hoshall, and the deponent.

Question. How came you to be privy to that conversation?

Answer. I was the attorney who prepared the conveyance from Travers to Taylor of a one-third interest of the property in controversy. Mr. Hoshal declined at the time to ratify the sale made by Travers as above, and stated that he desired first to see Travers and have a set-
77 tlement with him, after which he would without hesitation confirm the sale. It was stated in that conversation to Hoshall that Travers made sale of his interest under the verbal authority aforesaid, relying upon his integrity and promise to ratify the same on his return. Hoshall admitted that he had authorized him to sell his interest. I prepared the conveyance from Travers to Taylor in strict accordance with their instruction.

And further this deponent saith not.

(Signed) GEO. W. NEALE.

WEST VIRGINIA, *Wood County, to wit:*

I, William Dils, a notary public for the county aforesaid, do hereby certify that the foregoing deposition of George W. Neale was duly taken, sworn to, and subscribed before me at the time and place mentioned therein. Given under my hand this twenty-seventh day of August, 1866.

(Signed) WILLIAM DILS,
Notary Public.

[5-cts. U. S. inter. rev.]

No other witness appearing, the further taking of these depositions is continued until Tuesday, August 28th, 1866, at the same place and between the same hours.

(Signed) WILLIAM DILS,
Notary Public.

WEST VIRGINIA, *Wood County, to wit:*

78 I, George W. Neale, a commissioner in chancery of the circuit court of said county, do hereby certify that the foregoing depositions taken before me were duly taken, sworn to, and subscribed before me at the time and places mentioned therein. Given under my hand this twenty-eighth day of August, 1866.

(Signed) GEO. W. NEALE,
Commissioner.

Commissioner's fees, $15 35, charged to and paid by defendants.

(Signed) GEO. W. NEALE,
Commissioner.

And now at this day, to wit, at a district court of the United States for the district of West Virginia, continued and held at Clarksburg, on the same day and year first herein mentioned, to wit, on Friday, the 6th day of September, A. D. 1867, this cause came on this day to be heard on the bill and exhibits filed therewith, the answer of defendants Longmoor, Rathbone, and Travers, and the replications thereto, and the order of publication duly executed as to the non-resident defendants, and the exhibits filed with said answers and depositions taken in said cause, and was argued by counsel, on consideration whereof, it is adjudged,

79 ordered, and decreed that the bill of the complainant be and the same is hereby dismissed, and that the defendants recover against their costs by them about their defense in this behalf expended. And upon motion of the complainant, by his counsel, the court here certifies that the matters in dispute in this cause exceeds in value the sum of two thousand dollars, exclusive of costs. And the complainant thereupon prays an appeal from the foregoing decree to the Supreme Court of the United States, which is allowed him upon his entering into bond with sufficient security with the clerk of this court within ninety days, in the penalty of five hundred dollars, with conditions as the law directs.

UNITED STATES OF AMERICA, *District of West Virginia, sct:*

I, Jasper Y. Moore, clerk of the district court of the United States for the district of West Virginia, do certify that the foregoing is a true transcript of the record and proceedings of a certain suit in chancery, lately depending in said district court at Clarksburg between Isaac J. Hoshal, complainant, and Edward A. Taylor et al., defendants, with all things touching the same as fully and wholly as they now exist

80 among the records of my office.

In testimony whereof, I hereto set my hand and the seal of said court at Clarksburg, this 12th day of March, A. D. 1868, and in the 92d year of the independence of the United States of America.

[SEAL.] JASPER Y. MOORE,
Clerk D. C. U. S. for D. W. Va.

Appeal bond.

Know all men by these presents, that we, Isaac J. Hoshal, Samuel Newberger, & K. B. Stephenson, are held and firmly bound unto Edward A. Taylor, John C. Rathbone, Hugh P. Longmoor, John H. Travers, and Alanson Swain, in the sum of five hundred dollars, to be paid to the said obligees; to the which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally,

firmly by these presents. Sealed with our seals, and dated this 25th day of October, 1867.

The condition of the above obligation is such that whereas a decree was pronounced by the district court of the United States for the district of West Virginia, held at Clarksburg, at a court continued
81 and held the 6th day September, 1867, in a certain cause therein depending in chancery, in which the above-bound Isaac J. Hoshal was complainant, and the above-named E. A. Taylor, J. C. Rathbone, H. P. Longmoor, J. H. Travers, and A. Swain, were defendants, by which the bill of the complainant was dismissed with costs, from which said decree, on the prayer of the said complainant, an appeal was allowed by the said court to the Supreme Court of the United States, and the said complainant was required to give bond with security according to law.

Now, therefore, if the said Isaac J. Hoshal shall prosecute his said appeal to effect, and shall answer all damages and costs if he fail to make his said appeal good, then the above obligation to be void; else to remain in full force and virtue.

(Signed)	I. J. HOSHALL.	[SEAL.]
(Signed)	SAM'L NEWBERGER.	[SEAL.]
(Signed)	K. B. STEPHENSON.	[SEAL.]

Signed, sealed, and acknowledged in presence of the undersigned, judge of the United States court for the district of West Virginia.

82 The foregoing bond is approved and accepted.

(Signed) JOHN J. JACKSON, JR.,
Judge &c.

To the CLERK OF THE UNITED STATES COURT,
Held at Clarksburg for the District of West Virginia.

(Endorsed:) Filed in the clerk's office of the United States district court for the district of West Virginia at Clarksburg, this 19th day of November, 1867.

Test: JASPER Y. MOORE,
Clerk U. S. D. C. for D. W. Va.

A copy.
Test: JASPER Y. MOORE,
Clerk U. S. D. C. for D. W. Va.

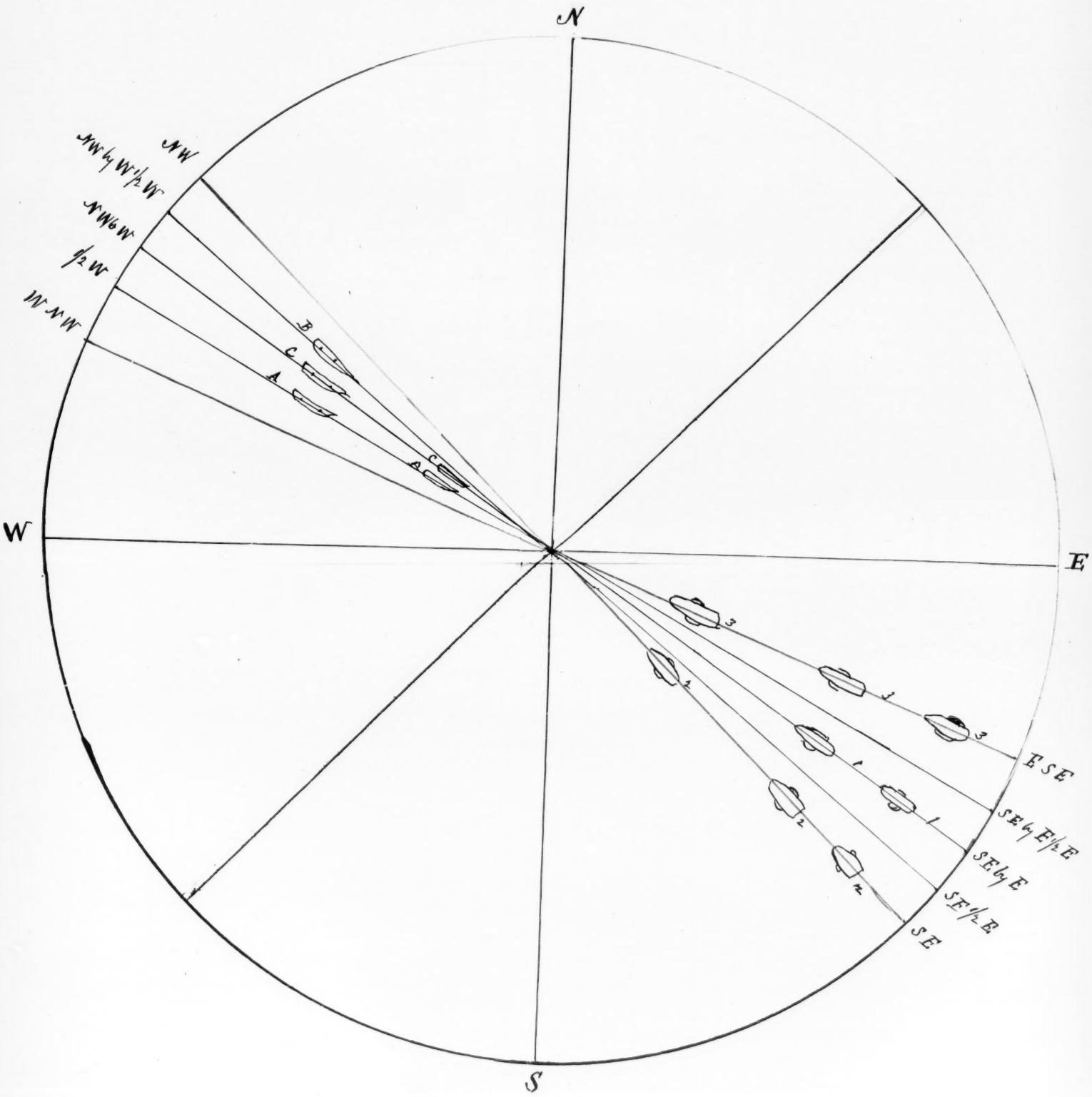
Supreme Court of the United States - No. 190

The Steamship Western Metropolis," her Tackle &c
Hiram Benner, and Samuel Brown, Claimants.
Appellants.

— vs. —

The Schooner "Mary C Town". Benjamin F. Town
et al; Claimants.

Diagram of D Mc Mahon
Proctor for Schooner
"Mary C Town"



A. Fox says Schooner headed S E by E ½ East fol 35.
B. Jn° Smith says S E ½ E fol 102
C Hilton says Schr heading S E b E (fol° 17. 225

I. John Roberts says Steamer headed N W b W fol 118
2. Captain Hilton says N W. fol 221.
3. Captain Fox says Steamer was coming from E.S.E fol 88.